

02-278



CHAIRMAN

Federal Communications Commission

Washington, D.C.

September 15, 2003

RECEIVED

SEP 29 2003

The Honorable W.J (Billy) Tauzin
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C 20515

Federal Communications Commission
Office of the Secretary

Dear Chairman Tauzin.

Thank you for your letter of August 15, 2003, regarding the Commission's recent amendment to its rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"). In your correspondence, you express concern about the Commission's decision requiring written consent before sending advertising faxes.

On September 18, 2002, the Commission released its *Notice of Proposed Rulemaking* ("NPRM") seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. Specifically, the *NPRM* sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's *Report and Order* released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

As we explained in the *Report and Order*, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before

No. of Copies of
List A/CODE

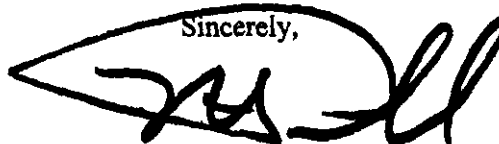
2

transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules initially were scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July *Report and Order*, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. This extension will allow senders of such advertisements additional time to obtain the necessary permission before the new rules become effective. In addition, it will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. I am enclosing a copy of the Commission's *Order on Reconsideration*, released on August 18, 2003.

I appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Powell', enclosed within a large, stylized oval shape.

Michael K. Powell

Enclosure

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No 02-278
Telephone Consumer Protection Act of 1991)
)
)
)
)
)

ORDER ON RECONSIDERATION

Adopted: August 18, 2003

Released: August 18, 2003

By the Commission:

1. On July 3, 2003, the Federal Communications Commission (Commission) released a Report and Order revising many of its telemarketing and facsimile advertising rules pursuant to the Telephone Consumer Protection Act of 1991 (TCPA).¹ Pursuant to Section 1.108 of the Commission's rules,² on our own motion, we issue this limited reconsideration of the *Report and Order* and extend, until January 1, 2005, the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. We also extend, until January 1, 2005, the effective date of amended rule 47 C.F.R. § 64.1200(a)(3)(i).³

2. In the *Report and Order*, the Commission reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers.⁴ The Commission determined that the established business relationship would no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements.⁵ Instead, the Commission

¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 03-153, Report and Order (rel. July 3, 2003) (*Report and Order*). A summary of this Report and Order was published in the Federal Register on July 25, 2003 (68 Fed. Reg. 44144).

² 47 C.F.R. § 1.108.

³ Amended rule 47 C.F.R. § 64.1200(a)(3)(i) provides that "a facsimile advertisement is not 'unsolicited' if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender."

⁴ *Report and Order* at para. 189.

⁵ *Id.*

NICHOLAS BLANKS, FLORIDA
JOE BARTON, TEXAS
FRANK LUTON, MICHIGAN
CLIFF STEWART, FLORIDA
PAUL E. GILLMORE, OHIO
JAMES C. GREENWOOD, PENNSYLVANIA
CHRISTOPHER COX, CALIFORNIA
NATHAN DEAL, GEORGIA
RICHARD BLUM, NORTH CAROLINA
ED WHITFIELD, KENTUCKY
CHARLIE NORWOOD, GEORGIA
BARBARA CUBIN, WYOMING
JOHN SHIMKUS, ILLINOIS
HEATHER WILSON, NEW MEXICO
JOHN B. SHADDOCK, ARIZONA
CHARLES W. "CHIT" MCSPRING, MISSISSIPPI
VITO FOSSELLA, NEW YORK
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
CHARLES F. BASS, NEW HAMPSHIRE
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, ALASKA
ERIN FLETCHER, KENTUCKY
MIKE PERGUSON, NEW JERSEY
MIKE ROGERS, MICHIGAN
DARRELL E. ISSA, CALIFORNIA
CL. BUTCH OTTER, IDAHO

ONE HUNDRED EIGHTH CONGRESS
U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

W J "BILLY" TAUZIN, LOUISIANA,
CHAIRMAN

August 15, 2003

JOHN D. DINGELL, MICHIGAN
HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RALPH M. HALL, TEXAS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, JR., NEW JERSEY
SHERROD BROWN, OHIO
BART GORDON, TENNESSEE
PETER DEUTSCH, WYOMING
BOBBY L. RUSH, ILLINOIS
ANNA C. ESCHOO, CALIFORNIA
JIMMY STUTAK, MICHIGAN
CLAY L. ENGEL, NEW YORK
ALBERT R. WYNN, MARYLAND
GEMME GREEN, TEXAS
KATHEN MCCARTHY, MISSOURI
TED STRICKLAND, OHIO
DIANA DORRIS, COLORADO
LOIS CAPPEL, CALIFORNIA
MICHAEL F. DOYLE, PENNSYLVANIA
CHRISTOPHER JOHN, LOUISIANA
TOM ALLEN, MAINE
JIM DAVIS, FLORIDA
JAN SCHAKOWSKY, ILLINOIS
HILDA L. SOLIS, CALIFORNIA

DAN H. UNOUILLETTE, STAFF DIRECTOR

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Powell:

While protecting consumers from unwanted telemarketing solicitations is a goal we share, we are writing to express our concerns about the Federal Communications Commission's ("Commission") recent changes to its facsimile advertising rules which were made pursuant to the Report and Order *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991* (released on July 3, 2003). In particular, we are concerned about the significant compliance burdens, both in terms of time and cost, which these recent changes will impose on businesses and trade associations.

More specifically, we are concerned about the significant compliance burdens associated with the changes which now will require businesses and trade associations to obtain the express written and signed consent of their customers and members before they can send facsimile advertisements to them. This new requirement reflects a substantial reversal of the Commission's eleven year-old statutory interpretation (of the TCPA) that an established business relationship (not written and signed consent) provided businesses and trade associations with the necessary express permission to send faxes to their customers and members.

As you know, many businesses and trade associations rely heavily on facsimile advertising as a cost-effective means of communicating with their customers and members in this regard. Under the new rules, businesses and trade associations will now have to reach each of their customers and members to get the requisite written and signed consent. We believe that the cost and time required for compliance with this new requirement will be significant. This is particularly true since the new requirement reflects a reversal of the eleven year-old rules upon which businesses and trade associations had come to rely. As such, because businesses and trade associations were never required to obtain written and signed consent in the past, they likely would have to start the process from scratch going forward.

18 AUG 2003 RCVD

The Honorable Michael K. Powell
Page 2

Based on the foregoing, we strongly urge the Commission to delay implementation of the new facsimile advertising rules in order to provide businesses and trade associations ample time to deal with the significant compliance burdens at issue. Thank you for your attention to our concerns.

Sincerely,



W.J. "Billy" Tauzin
Chairman

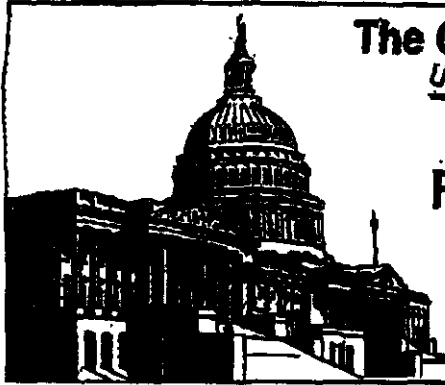


Fred Upton
Chairman
Subcommittee on Telecommunications
and the Internet

RECEIVED TIME AUG. 15. 12:59PM

PRINT TIME AUG. 15. 1:00PM






The Committee on Energy and Commerce
U.S. House of Representatives
W.J. "Billy" Tauzin, Chairman

Fax Transmission

2126 Rayburn House Office Building
Washington, D.C. 20515
(202) 225-2927
Fax: (202) 225-1919



To: The Honorable Michael K. Powell
Chairman
Federal Communications Commission
c/o Jim Balleguer & Paul Jackson

From: Chairman W.J. "Billy" Tauzin & Subcommittee Chairman Fred Upton
c/o Will Nordwind & Will Carty

Fax: 202-418-2806

Date: August 15, 2003

Phone: 202-418-1900

Pages: 3, including cover

Notes: Hard copy to follow by U.S. Mail.
